

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NEIL E. TIERNEY,

Plaintiff,

v.

JOHN GAUDRAULT, MICHAEL R.  
SOBON, O'CONNELL OIL  
ASSOCIATES, INC., GLOBAL  
MONTELLO GROUP CORP., and  
LPJ DONUTS, INC.,

Respondent.

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Civil Action No. 17-30125-MGM

MEMORANDUM AND ORDER RE: REPORT AND  
RECOMMENDATION REGARDING DEFENDANTS'  
MOTION TO DISMISS AND PLAINTIFF'S MOTIONS  
FOR JUDGMENT ON THE PLEADING AND FOR  
INJUNCTIVE RELIEF

(Dkt. No. 15, 21, 26, and 31)

February 14, 2019

MASTROIANNI, U.S.D.J.

Magistrate Judge Katherine A. Robertson has recommended that this court grant in part Defendants' motion to dismiss (as to the claims under the Petroleum Marketing Practices Act "PMPA") and decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims by dismissing those claims without prejudice to refile in state court. (Dkt. No. 31.) In short, Judge Robertson concluded that Plaintiff's claims premised on the PMPA are barred by that statute's one-year limitations period and should be dismissed with prejudice. In addition, Judge Robertson explained that because Plaintiff's federal claims are subject to dismissal, the court should

not exercise supplemental jurisdiction over the state law claims. *See Lawless v. Steward Health Care Sys., LLC*, 894 F.3d 9, 20 (1st Cir. 2018) (“When any and all federal claims have been dismissed prior to trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity often will counsel in favor of declining jurisdiction over any remaining state-law claims.” (internal quotation marks omitted)). The Report and Recommendation notified Plaintiff that he had fourteen days to file an objection. No objection has been filed.

Based upon the thorough analysis presented in the Report and Recommendation, and noting there are no objections, the court, upon *de novo* review, hereby ADOPTS the Report and Recommendation. (Dkt. No. 31.) Based upon this, Defendants’ Motion to Dismiss (Dkt. No. 15) is hereby ALLOWED IN PART. Plaintiff’s claims under the PMPA are dismissed with prejudice. The court declines to exercise supplemental jurisdiction over the remaining state law claims and dismisses those claims without prejudice. In addition, the court DENIES AS MOOT Plaintiff’s Motion for Judgment on the Pleadings (Dkt. No. 21) and Plaintiff’s Motion for Injunctive Relief (Dkt. No. 26). This case may now be closed.

It is So Ordered.

/s/ Mark G. Mastroianni  
MARK G. MASTROIANNI  
United States District Judge